IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.107 OF 2004
IN
WRIT PETITION NO.1570 OF 2004

M/s.A.T.C. (Clearing & Shipping)
Pvt.Ltd. .. Appellant

v/s.

Employees' State Insurance
Corporation through its Joint
Director. .. Respondent

Mr.S.M.Oak for appellant.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 1st April, 2005

P.C.

Heard.

2. The learned Single Judge in her order dated 29.3.2004 impugned in the present appeal observed that issuance of notice dated 30.9.2003 by Employees State Insurance Corporation (for short, 'the Corporation') for recovery of amount of contribution and damages has given rise to the dispute and for resolution thereof there is remedy under section 75 of the Employees State Insurance Act, 1948 (for short 'Act of 1948').

3. Mr.S.M.Oak, the learned counsel for the appellant submits that by the notice dated 30.09.2003, the recovery of contribution and damages for the period from 12.11.1978 to 05.12.1997 is sought to be made which is time barred. He referred to proviso to clause (b) of sub-section (1A) of section 77 of Act of 1948 and submitted that the Corporation cannot make any claim after five years of the period to which the claim relates and since in the notice dated 30.9.2003, the Corporation has sought to recover damages for unpaid contributions of the period beyond five years from the issuance of the said show-cause notice, the cause of action for the time barred period cannot be subject matter of the proceedings under section 75 of the Act of 1948.

4. It is not in dispute that the claim made by the Corporation for unpaid contributions is a dispute covered by section 75 of the Act of 1948. What is contended by the learned counsel for the appellant is that the time barred claim within the meaning of the proviso appended to clause (b) of sub-section (1A) of Section 77 cannot be the subject matter of adjudication of dispute under section 75 by Employees Insurance Court.

5. We are unable to accept the contention of the

learned counsel for the appellant. Clause (b) of sub-section (1A) of section 77 of Act of 1948 is a provision of legal fiction whereby the cause of action in respect of claim of the Corporation for recovery of contributions is deemed to have arisen on the date such claim is made by the Corporation for the first time. Whether such claim is time barred within the meaning of proviso has necessarily to be examined as and when the objection is raised by the contesting party in the dispute under Section 75. The proviso to clause (b) of sub-section (1A) does not control the principal provision contained in clause (b) relating to the date when the cause of action can be said to have arisen. The proviso bars the claim of the Corporation beyond five years of the period to which the claim relates. Whether the claim of the Corporation is time barred or not has to be decided by the Employees Insurance Court under section 75 of the Act of 1948.

6. The appellant, thus, has legal remedy for redressal of the grievance by raising the dispute under section 75 of the Act of 1948. The learned Single Judge cannot be said to have erred in refusing to invoke the extraordinary jurisdiction in view of the efficient remedy available to the appellant.

7. Letters Patent Appeal is, accordingly, dismissed in limine.

8. Needless to say that while raising a dispute about the claim of the Corporation for recovery of unpaid contributions and damages pursuant to the show-cause notice dated 30.9.2003, it is always open to the appellant to raise the plea of limitation in terms of the proviso to clause (b) of sub-section (1A) of section 77.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)